M & G Convoy, Inc. *and* **Dave L. Williams.** Case 6-CA-12459

March 19, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On December 30, 1980, Administrative Law Judge Harold Bernard, Jr., issued the attached Decision in this proceeding. Thereafter, M & G Convoy, Inc., Respondent herein, filed exceptions and a supporting brief, Dave L. Williams, the Charging Party herein, filed exceptions, a supporting brief, and a brief in answer to Respondent's exceptions, and the General Counsel filed a brief in answer to Respondent's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.[2]

In its exceptions, Respondent asserts, *inter alia*, that its refusal to employ the Murrysville-Pitcairn employees at its New Stanton facility after it closed its Pitcairn railhead was not in violation of the Act inasmuch as there is no showing that it had any openings at New Stanton at that time. Assuming *arguendo* that Respondent had no openings at its New Stanton facility as of the time it actually closed its Pitcairn railhead, this argument is disingenuous for it is clear that Respondent accomplished this result by hiring 15 new, inexperienced drivers and transferring 4 others from its Buffalo facility after it learned in mid-March of Chrysler's decision requiring the closing of the Pitcairn railhead.[3] That this staffing decision was motivated solely by Respondent's expressed desire to keep its New Stanton facility "pure" of the Murrysville-Pitcairn employees[4] is established by the fact that none of these newly hired or transferred employees was utilized at New Stanton prior to the date the last railcar was received at Pitcairn and only six of these employees (two new and four transferred) were utilized prior to the date that the last vehicle was shipped from Pitcairn. Thus, this staffing decision accomplished no legitimate business goal, nor was it likely to since, according to Respondent's terminal manager at New Stanton, each newly hired driver had to be trained for approximately 3 weeks at a cost of $500 prior to being utilized at New Stanton. Contrarily, experienced drivers, such as the Murrysville-Pitcairn employees, could be utilized at New Stanton immediately; in fact, several of the Murrysville-Pitcairn employees were utilized at New Stanton from time to time as "floaters," but were denied permanent employment. Under these circumstances, we can conclude only that the reason that Respondent chose to staff its New Stanton facility in this manner was to avoid its contractual obligation under article 5, section 3(a), of the National Automobile Transporters Agreement to offer employment at New Stanton to those employees who were laid off when the Pitcairn railhead closed. Accordingly, we adopt the Administrative Law Judge's finding that Respondent violated Section 8(a)(3) and (1) of the Act by failing and refusing to transfer employees in the bargaining unit from Pitcairn to New Stanton in April 1979.[5]

[1] Respondent asserts that the Administrative Law Judge's resolutions of credibility, findings of fact, and conclusions of law are the result of bias. After a careful examination of the entire record, we are satisfied that this allegation is without merit. There is no basis for finding that bias and partiality existed merely because the Administrative Law Judge resolved important factual conflicts in favor of the General Counsel's witnesses. As the Supreme Court stated in *N.L.R.B. v. Pittsburgh Steamship Company*, 337 U.S. 656, 659 (1949), "[T]otal rejection of an opposed view cannot of itself impugn the integrity or competence of a trier of fact." Furthermore, it is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] In his recommended Order, the Administrative Law Judge referred to employee Tom Nacey as "Toni Nancy." We shall modify his recommended Order to correct this inadvertent error.

[3] Respondent contends that it did not know when the Pitcairn railhead would close until April 10, 1979, the date that the last railcar was received at Pitcairn. Inasmuch as all of Respondent's traffic from Chrysler is processed on a computer through Respondent's Detroit terminal and in view of the fact that a railcar is loaded 10 to 13 days prior to arrival at Pitcairn, we reject Respondent's contention in this regard. Moreover, Respondent's terminal manager at Pitcairn testified that he ceased looking for a new garage in mid-March 1979 "as soon as [he] found out that the terminal was going to be closed."

[4] For the reasons stated by the Administrative Law Judge, it is clear that Respondent's desire to keep its New Stanton facility "pure" of these employees was due to the fact that, as members of Teamsters Local 249, they actively enforced the terms of their contract and, thus, were viewed by Respondent as "troublemakers."

[5] In this connection, the remedial order of the Administrative Law Judge runs from April 1979, the date when Respondent closed down the Murrysville-Pitcairn facility. However, he also found that it was Respondent's policy both before and since the commencement of the 10(b) period on December 13, 1978, not to transfer Murrysville-Pitcairn employees to New Stanton and that this policy was discriminatorily motivated. We shall therefore modify the remedial order by making it effective as of December 13, 1978. The question of which Murrysville-Pitcairn employees were discriminatorily denied transfers to the New Stanton facility on or after that date can be determined at the compliance stage of this proceeding.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, M & G Convoy, Inc., New Stanton, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 1(a):

"(a) Refusing to employ as regular full-time drivers at its New Stanton, Pennsylvania, location all former employees at Murrysville-Pitcairn, including Carl Adams, Robert Amantea, Harry Barbus, Charles Burgh, Walter C. Dollman, David Eld, Frank Komlenic, Robert Kaczynski, George Lawrence, Cliff Lockwood, Jr., Tom Nacey, William Nock, Al Toth, William Walters, Dave Williams, and Scotty Norris."

2. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT refuse to transfer employees who desire to transfer to the New Stanton terminal in order to discourage employees from filing grievances or to discourage membership in or activities on behalf of Local 249, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

WE WILL NOT threaten employees that we will not transfer or accept for employment at New Stanton any employees who worked at Murrysville-Pitcairn who were members of or affiliated with the above-named Union.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in the National Labor Relations Act, as amended.

WE WILL offer immediate positions at New Stanton to Carl Adams, Robert Amantea, Harry Barbus, Charles Burgh, Walter C. Dollman, David Eld, Frank Komlenic, Robert Kaczynski, George Lawrence, Cliff Lockwood, Jr., Tom Nacey, William Nock, Al Toth, William Walters, Dave Williams, and Scotty Norris, without prejudice to their seniority and other rights and privileges, and make them whole for any loss of pay suffered as a result of the discrimination against them, plus interest, and establish a preferential hiring list for other former employees at Murrysville-Pitcairn who were discouraged from applying for transfer to New Stanton by our discriminatory conduct.

M & G CONVOY, INC.

DECISION

STATEMENT OF THE CASE

HAROLD BERNARD, JR., Administrative Law Judge: This case was heard on January 10, 11, 22, and 23, 1980, in Pittsburgh, Pennsylvania, pursuant to a complaint issued in July 1979, alleging that M & G Convoy, Inc., herein called Respondent or M & G, violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, by making and carrying out threats not to transfer employees from its Murrysville terminal to its new terminal in New Stanton, Pennsylvania, because said employees engaged in protected concerted union activities. Respondent denies the commission of any unfair labor practices and attributes its staffing decisions at New Stanton solely to valid business considerations.

Upon consideration of the entire record, the demeanor of the witnesses, and carefully prepared briefs filed by the parties, I make the following:

FINDINGS AND CONCLUSIONS

I. JURISDICTION

Respondent admits, the record shows, and I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Concededly, General Teamsters, Chauffeurs and Helpers Local 249, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

Agency

The complaint alleges that the following individuals were supervisors and agents of Respondent: Mike Petrina, president; Fritz Reinhardt, executive vice president; E. J. Bannon, vice president of operations and traffic; Peter Ulrihich (corrected to Ulrich), vice president (corrected to director) of safety and personnel; Donald Rager, Murrysville terminal manager; and William D. Howell, New Stanton terminal manager. Respondent, by answer, agreed that the above were supervisors as defined in the Act and that their titles were accurate, but took no position on their alleged agency status. Based upon their status as agreed-upon supervisors invested with managerial authority to operate Respondent's busi-

ness, as clearly shown by their own testimony and this record reflecting such status, I find that at all times material herein the above were both supervisors and agents of Respondent, acting on its behalf, within the meaning of Section 2(11) and (13) of the Act.

II. THE UNFAIR LABOR PRACTICES

A. *Background*

Respondent is engaged in the business of transporting new cars by truck carriers from terminals located in, among other places, Newark, New Jersey; Wilmington, Delaware; Buffalo, New York; Detroit, Michigan; and New Stanton, Pennsylvania. Respondent, until April 1979, also operated a terminal and railhead facility at Murrysville, Pennsylvania—the railhead portion of this facility being known as Pitcairn. Employees at "Murrysville-Pitcairn," some 21 drivers and 5 mechanics, were principally engaged in transporting Chrysler- made new cars and were represented by Teamsters Local 249. Due to a rate rearrangement with Chrysler whereby the traffic formerly routed through Murrysville-Pitcairn could be handled via the Detroit, Michigan, facilities of Respondent, the Murrysville-Pitcairn facility ceased handling Chryslers—the last such vehicle being shipped from there on April 20, 1979. However, from then until June 18, 1979, many Murrysville drivers worked on a "floating" basis at Respondent's new location in New Stanton, discussed below.

Somewhat concurrently with the developments at Murrysville-Pitcairn, a substantial change in Respondent's business with another customer, Volkswagen (VW), had occurred earlier when the latter opened a new car assembly plant in New Stanton—only about 24 miles from Murrysville—in July 1978.

Beginning in June 1978, Respondent hired 78 employees for a new terminal operation to serve VW's transportation needs in the New Stanton-Murrysville area, drawing either from outside applicants (some 54 in number) or from employees already working at its existing terminals (some 24 in number), where, in some cases, Respondent had handled VW traffic from port of entry locations prior to New Stanton's opening. None of the alleged discriminatees (drivers) at Murrysville as set forth in the complaint herein were offered regular employment at New Stanton, nor were their continuing requests for such employment granted. Respondent chose, instead, to offer Murrysville drivers the chance on a "follow the work" principle to transfer to its Detroit, Michigan, terminal, which is located 300 miles from Murrysville. Those who chose not to do so or not to accept transfers to other locations (other than New Stanton) were laid off. Whether Respondent's conduct in this regard was unlawful is now considered.

B. *Respondent's Attitude Towards Local 249 Members at Murrysville*

Well before the New Stanton operation fully commenced in July 1978 there were ominous signs for any hopes entertained by Murrysville drivers that they would be allowed to transfer to the new terminal, only 24 miles from the soon-to-be-closed Murrysville site, thereby clearly avoiding a change in residence and insuring for themselves what appeared to be a profitable source of continuing employment.

The earliest indicators appeared well before the 6-month statutory limitations period set forth in Section 10(b) of the Act—the charge was filed on June 13, 1979—and thus do not afford any basis for finding a violation in this case, but nevertheless provide valuable background.

Thus, when Robert Amantea was hired as one of Respondent's drivers at Murrysville in March 1974, Terminal Manager Rager informed him that driver Frank Komlenic, a frequent grievance filer, was a "troublemaker." Rager later told Amantea, in February 1978, that because of Komlenic they, the Murrysville drivers, could forget working at New Stanton, and that, if Komlenic were elected steward, M & G would close the terminal. Amantea further recalled that sometime in March or April 1978 Rager characterized Local 249 members as being "troublemakers" as a group. Rager also told driver Albert Toth, when the latter was hired in May 1978, to stay away from Komlenic because he "makes trouble" for the terminal.

There is no question that Komlenic exercised the right to file grievances, as shown by his filing 33 grievances out of the 69 filed by Local 249 members between April 15, 1978, and April 1979. Respondent made known its notice of this fact during a telephone conference call meeting with Local 249 on May 3, 1978, attended by Komlenic, Union President Thomas Fagan, and Dave Williams, union steward, when E. J. Bannon, vice president of operations and traffic, was heard by Williams to sarcastically ask whether anyone else besides Komlenic filed grievances. When informed Komlenic was present, Bannon replied he "didn't . . . give a damn."

Later that summer, Respondent and Local 249, with Komlenic and Williams present, met to discuss grievances, mainly those filed by Komlenic. Bannon, present with Ron Borgas, Respondent's director of labor relations—a stipulated supervisor whom I find also to be a highly authoritative agent of Respondent—and Rager, inquired whether Komlenic had nothing better to do on a Sunday than to file grievances, asked why he did not take up golf instead, and called the grievances "chicken [manure]." Bannon also stated that Respondent did not need such "aggravation." At a third meeting on Komlenic's grievances that fall, held at a Ramada Inn, Bannon again deprecated the grievances as before, this time being echoed by Borgas, who referred to the grievances with the same description. Bannon also asked Williams if he, Williams, was a "90-day wonder" with contracts.

During the same time period as these meetings, Williams informed Respondent through Terminal Manager Rager that he and drivers Walt Dollman and Bill Walters wished to transfer to the New Stanton facility, but that Rager had indicated they would not be working at New Stanton because of Komlenic. Williams also filed a grievance, on August 19, 1978, complaining that all the Murrysville employees were not getting an opportunity to work at New Stanton, thereby communicating to Respondent that the Murrysville drivers desired such trans-

fers. Williams further recalled a conversation near the water fountain with drivers Amantea and Dollman in November 1978 when Rager walked over from his nearby office and said, "You guys will never get to New Stanton as long as Komlenic is here.

Dollman, who corroborated Williams' account, recalled a further similar comment by Rager, in May 1979 at the New Stanton garage, when Rager was discussing with driver George Lawrence in Rager's office the possible reasons why M & G would "uproot" the experienced Murrysville drivers and their families who lived only 20 miles from New Stanton, and Rager stated it was because the drivers belonged to Local 249 and also due to Komlenic. Dollman further recalled that Rager, referring to "our knowledge," pointed out that Local 249 had refused to agree to a "competitive" rate reducing wages on return hauls in this same conversation. Lawrence corroborated Dollman, adding that Rager said, referring to members of Local 249, that they were troublemakers and he did not want any part of them. Lawrence testified to an earlier talk with Rager when Lawrence was asking about a transfer to New Stanton and Rager said, "No way, they don't want no part of Local 249."

Later in the summer of 1979, Rager, in a talk with Dollman in their neighborhood, repeated the threat that as long as Komlenic worked for M & G there was no way the Murrysville drivers would be employed at New Stanton, and stated that Respondent did not want "our experience and knowledge," over at Local 30, the new Teamsters local at New Stanton. The record shows that, as a Local 249 member, Dollman grieved over being paid the competitive rate on a return load and, as a result, was paid the full rate, while, by contrast, the new local union at New Stanton, Local 30, agreed to this lower competitive rate for drivers at New Stanton.

Still further indications why the staffing at New Stanton excluded Murrysville drivers is found in testimony by lead mechanic Robert Colbert, a veteran employee with 14-1/2 years' service who was highly credible in his matter-of-fact responses under examination. Colbert's duties involved, *inter alia*, contacts with company officials. He recalled that Komlenic filed numerous grievances, some of which were shown to him by Rager in the latter's office during the final months of the Murrysville operation. On one such occasion, Rager told him, "[L]ook what this bastard wants now, look what he's doing to us now." Rager said, according to Colbert, that Komlenic demanded every little thing and probably would be the cause of "none of us getting to New Stanton." Colbert recalled Ragers saying, on other occasions on unspecified dates, "[I]f it wasn't for that bastard we would probably all have jobs at New Stanton."

Colbert testified that, during a telephone conversation with Fritz Reinhardt, Respondent's executive vice president, in March 1979, Reinhardt told Colbert that he would like to be rid of Komlenic, and that Respondent had fired Komlenic once but that "our" Union had saved him. Reinhardt, by this account, also stated that if Respondent were rid of Komlenic "we probably all would have jobs at New Stanton." Colbert called Reinhardt during the second week in April 1979 as a followup to a call the week before in which Reinhardt had assured him a place in New Stanton, saying, "[W]e take care of our people." During this second call, Reinhardt told Colbert he would have to follow the work and go to Detroit, repeating the comment that Komlenic had caused this. Colbert's accounts are credited over Reinhardt's unelucidating denials, often secured by leading questions and marked by a lack of conviction and the spontaneity associated with his credible testimony in noncontroversial areas of questioning.

There were other unfavorable signs. Driver Robert Thomas recalled Rager's telling him, in response to his asking about a chance to go to New Stanton in November 1978, that no one would go as long as Komlenic worked for him. According to another driver, William Walters, after the Murrysville garage closed between November 1978 and April 1979 (leaving only the Pitcairn railhead where Respondent operated from a trailer), Rager told him that he could thank those two "assholes," referring to Shop Steward Williams and Komlenic, for not getting to New Stanton.

Komlenic, a senior employee with 13 years' seniority, testified that in a conversation with Rager on January 22, 1979, Rager referred to grievances filed by Komlenic as, "It is this kind of stuff that's going to keep us from going to New Stanton," and corroborated Williams' description of Bannon's comments during the earlier-described grievance meetings. Komlenic also testified that Rager said "that Buffalo had told him that none of the Murrysville men would go to New Stanton, including myself because of me" (meaning Komlenic). Driver Clifford Lockwood described similar statements by Rager as reported by other drivers. He further testified that Rager, around November 1978, after the Murrysville garage had closed, said Respondent was getting New Stanton off the ground and did not need any Local 249 people, or troublemakers, people like Komlenic. Driver Albert Toth, also corroborating earlier accounts of threats by Rager that the drivers would not go to New Stanton due to Komlenic and Steward Williams, further testified that he had a conversation with New Stanton Terminal Manager William D. Howell in early April 1979 and asked Howell for a job there. Toth testified that Howell said he would hire them all (the Murrysville drivers), but because of Komlenic and Williams "they would be held back." I found Howell credible in noncontroversial areas, but he exhibited a selective power of recall and was fed leading questions as to Toth's account and other matters in issue. By contrast, Toth's unvarnished account and credible demeanor, coupled with his ignoring opportunities to embellish his testimony in favor of the party calling him, commends his account over Howell's. I further find Rager's testimony—in which he frequently was led but also frequently expressed an inability to recall, rather than a convincing denial of, the numerous statements covering Respondent's staffing intentions at New Stanton attributed to him—totally unpersuasive. E. J. Bannon, vice president of operations and traffic, was not called to testify by Respondent.[1]

[1] I do not find persuasive for purposes of determining credibility, as alleged by Respondent, the mere fact that driver logs do not establish the

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C. *Murrysville Drivers' Request To Transfer to New Stanton*

It is not controverted that the Murrysville drivers communicated requests to Respondent that they be allowed to transfer to New Stanton and, while Respondent represented at the hearing that there was no provision in the collective-bargaining contract permitting transfers "within the agreement," likewise no provision was pointed out in the agreement which would prevent an employer from transferring employees.

Respondent adverts to the contract and grievances[2] themselves in defense of its actions in many different respects throughout its brief, as if seeking to establish that conduct considered or found consistent with contract language is *ipso facto* free from unlawfulness, or that, because Murrysville employees had "rights" to follow the work to Detroit under the contract, their own voiced requests, indeed insistence, on not transferring to Detroit is meaningless in the scheme of things. This is particularly revealing as to the absence of *bona fides* in Respondent's position inasmuch as it had not only been confronted with a grievance over the matter as early as August 19, 1978 (G.C. Exh. 2(c)), on behalf of all Murrysville employees, as well as numerous requests by individuals, but also because it had other firsthand evidence before it that employees desired to transfer to New Stanton from mid to late April 1979—well within the 10(b) period. Thus, by letters addressed to vice president of operations Bannon, 18 Murrysville employees sent requests dated either April 16 or April 23, 1979, stating their willingness to accept assignments with regular classification at the Westmoreland (New Stanton) M & G terminal (G.C. Exhs. 4(a)–(r)). It is not disputed that such requests were denied.

Further, there was testimony by employee Walters that in a call (see fn. 1) on February 13, 1979, to the central dispatch manager and an agreed-upon supervisor, Womer, in Buffalo, clearly another authoritative Respondent representative, Respondent was aware that Murrysville-Pitcairn could be closing by mid-March. Womer was not called to testify in denial. Ralph Thompson, Respondent's vice president of industrial relations who admittedly understood that Murrysville employees wanted to transfer to New Stanton from "general knowledge," also was aware that Murrysville was closing by March 1979 because he knew, as he testified, that Respondent was going to "absorb" the Murrysville drivers at Detroit at that time. The fact that Respondent, as testified by Thompson, conceded that the need for drivers at New Stanton doubled during that same period from 30 to 60 employees without any Murrysville driver being offered a position at New Stanton is also a reliable indicator that Respondent, at least since mid-March 1979, would have offered Murrysville drivers positions at New Stanton because it needed drivers there but for its earlier announcements of intentions to discriminate against them. That this was caused by discrimination is not successfully rebutted by Respondent's defenses, but rather is further buttressed.

D. *Respondent's Position*

Respondent's witnesses generally denied or were unable to recall the numerous statements attributed to them by the General Counsel's witnesses. In addition, Respondent submitted various reasons why the Murrysville drivers involved herein were not employed at New Stanton. One advanced reason is the assertion that the drivers' equipment was not usable for the smaller sized VW vehicles at New Stanton; yet Murrysville drivers had indisputably worked out of New Stanton on numerous occasions delivering VW products with no reported difficulty, nor was such "more suitable" equipment shown to be unavailable to Respondent. A second alleged reason is the assertion that Murrysville drivers were needed at Murrysville; yet the record clearly shows that at many relevant times, including hiring periods at New Stanton, Murrysville drivers were being used at New Stanton because work was slow at Murrysville. Thus, as only two of other representative examples, driver Walters hauled loads out of New Stanton in April 1979, and that same spring driver Dollman received driving assignments there. Even more significantly, drivers were laid off due to lack of work at Murrysville yet were not even offered employment at New Stanton. A third reason was the assertion that the Murrysville drivers were needed at the Detroit terminal and, due to the desirability of backhauling, could not be used at New Stanton. The record fails to establish, however, why Murrysville drivers could not be stationed at New Stanton and still be used for Detroit business, and no reason appears why, as questioned by the General Counsel, drivers could not backhaul Detroit traffic though stationed in New Stanton. Nor does Respondent's reliance on a "follow the work principle" apply in a controlling manner herein inasmuch as, during the advent of the New Stanton operation and afterward, Murrysville drivers frequently worked there—a fact which could warrant considering Murrysville drivers as entitled, to some degree at least, to consideration for assignment to New Stanton since New Stanton runs were "part" of the Murrysville "work" prior to the Murrysville closing. A fourth and still further shifting defense by Respondent was that it did not know Murrysville was going to close at or around the time New Stanton was being staffed. This defense also lacks merit inasmuch as the record

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date on which certain alleged telephone calls took place or, in one instance, the alleged location from which a call was made, as the passage of time might well have led to mistakes on details such as these, and the gist of these occurrences was forthrightly and credibly tendered in contrast to the denials of same, which were not. In fact, as to the call by William Walters to the Buffalo central dispatch manager, John Womer, on February 13, 1979, Respondent failed to call Womer to the stand to deny such call or its contents, but merely pointed out that Walters' log did not "show" the call. Further, Respondent's argument that Williams' testimony that he drove from New Stanton in January 1979 was not supported by the logs is correct; however, Williams also testified without contradiction that he also drove from New Stanton in February and March 1979 so that the fact of a Murrysville driver's use at New Stanton in this period, along with uncontradicted testimony by Toth and Dollman that they, too, were regularly used at New Stanton, remains established. Further, the fact that a witness' testimony is not credited in one respect does not require that other parts of such testimony cannot be relied on. Accordingly, Williams' testimony otherwise is credited.

[2] None of the grievances filed during events in this case dealt with allegations of unlawful discrimination under the Act so that their resolution is not controlling to the outcome herein.

demonstrates that Respondent hired 15 new drivers and transferred 4 others into New Stanton after it admittedly learned of Chrysler's decision requiring the closing of Murrysville-Pitcairn in mid-March 1979 and the latter closed the following month (G.C. Exh. 9).

Likewise worthy of answering is why drivers were allowed to float to New Stanton after April 1979 if they were needed at Detroit, and why they were given the option of Newark if the Detroit operation needed them. That these drivers were not needed in Detroit is shown, as argued by the General Counsel, by Respondent's assertion they would have been allowed to float after June 1979 if only they had a "home" terminal. Respondent further advanced as a reason why Murrysville drivers were not "housed" in New Stanton that it would be a problem, *inter alia*, because there would then be two local unions at the same location and it would be difficult to decide which equipment (trucks) would be serviced first. The tenuousness in such a defense is obvious and no reason was advanced why normal scheduling procedures for maintenance could not be followed without encountering insurmountable problems. Respondent cannot escape the revealing inquiry—why with a location only some 20 miles distant from a site where a seasoned group of drivers was present, and where it had fully closed one half or more of its facility (i.e., the Murrysville terminal in November 1978, leaving only the Pitcairn railhead, which was not suitable for any major maintenance or repairs of its valuable equipment, as testified by its own witnesses) and was looking for a new terminal to house operations in the area—it did not simply move, bag and baggage, into its own facility some 20 miles away. Nothing is shown by the record, in my view, that suggests how Respondent's own described interests in this set of events could have been harmed by this single economic expedient other than its expressed desire to keep New Stanton pure of Local 249 members. The likelihood, if not certainty, that Respondent's decision would require drivers to uproot their families to a location over 300 miles away indicates still further that there was good reason to utilize New Stanton as a new base for former Murrysville employees to meet M & G's needs.

Finally, it is germane to note that despite the widespread knowledge on the part of employees concerning the reasons for Murrysville employees' not being hired at New Stanton—knowledge based upon unequivocal statements made to them by Respondent's own representatives at Murrysville-Pitcairn and New Stanton—Respondent never issued an authoritative disavowal of those statements or advanced the reasons it now presents, so that the publicized reasons for Respondent's conduct were allowed to stand uncontradicted. *Civic Center Cleaning Co., Inc.*, 252 NLRB 760 (1980).

E. *Analysis*

Respondent's asserted reasons, since they are based upon threats and retaliation for the exercise of clearly protected concerted union activities—the filing of grievances, the processing and seeking redress of employee complaints concerning working conditions by an active union steward and grievance filing union member, the taking of positions in negotiations and in grievances opposing the reduction of wages to facilitate a competitive rate insuring Respondent more business, and the policing or monitoring of contract terms on matters whether large or small—clearly establish that Respondent acted upon unlawful motives in violation of Section 8(a)(1) and (3) of the Act when it threatened employees that it would not allow them to be employed at New Stanton and carried out those threats. *D. H. I. Enterprises, Inc.*, 239 NLRB 1037 (1978). Nothing further need be noted than the express and unlawful reasons advanced for Respondent's action because these statements themselves constitute sufficient proof of an unlawful motive in Respondent's refusal and failure to grant the Murrysville employees their communicated requests, orally, by letter, and by grievance, to Respondent that they be transferred 24 miles from Murrysville to the New Stanton location, where Respondent itself conceded it needed "experienced" drivers. *Central Power and Light Company*, 239 NLRB 456 (1978); *Boro Burglar Alarm Company*, 234 NLRB 389 (1978); *Tri-Maintenance & Contractors, Inc.*, 235 NLRB 895 (1978); *Pittsburgh Press Company*, 234 NLRB 408 (1978); *The Newark Morning Ledger Company*, 232 NLRB 581 (1977); and *J. S. Alberici Construction Co., Inc.*, 231 NLRB 1038 (1977). As also noted by the General Counsel in his excellent brief these statements are to be taken at face value because, as the Board stated:

> If we were to engage in . . . speculation [concerning other possible reasons] we would leave the door open for an employer to tell an employee . . . that he was discharged for protected activities, with the effect that would have on other employees, and then to later defend on the ground that actually the employee was discharged for some other legitimate reason. We are unwilling to do so.

Chef Nathan Sez Eat Here, Inc., 181 NLRB 159 (1970). By close analogy to the present circumstances, no such speculation is warranted in this case. But while this finding that Respondent violated Section 8(a)(1) and (3) of the Act can stand alone on the basis of Respondent's own communicated reasons, it is further buttressed by its shifting defenses and its wholly unsupported and unpersuasive reasons for its conduct advanced at the hearing, as detailed above; for such transparency fails to hide, and has been held to evince, an unlawful motive. *Central Power and Light Company, supra* at 461; *First National Bank of Pueblo*, 240 NLRB 184 (1979); and *Best Products Company, Inc.*, 236 NLRB 1024, 1025 (1978).[3] Accordingly, I find, as alleged in the complaint, that Respondent unlawfully threatened Murrysville employees that they would not be employed at the New Stanton facility because of their protected concerted union activities, and,

[3] Significantly, Respondent failed to call to the stand a highly responsible official, Eugene Bannon—vice president of traffic and operations, who was very instrumental in making the decisions in this set of events, and to whom Murrysville employees communicated their express willingness to transfer to New Stanton—to set forth the reasons for the staffing decision or to deny the complaint allegations. See *Pyro Mining Company, Inc.*, 233 NLRB 233 (1977).

in fact, that it carried out that threat for such reason in violation of Section 8(a)(1) and (3) of the Act. See also *Allied Mills, Inc.*, 218 NLRB 281 (1975).

III. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section II, above, occurring in connection with the operations of Respondent described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

IV. THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that, by staffing its New Stanton facility in the above-described manner, Respondent discriminated with respect to Murrysville-Pitcairn employees, it shall be recommended that Respondent be ordered to remedy its violations by offering positions to the employees discriminated against, as identified in the complaint and as noted herein below, at the New Stanton facility and by making them whole for wages they would have earned there but for Respondent's discriminatory conduct beginning from April 1979, the time Respondent denied their requests for transfer, until this Order is complied with, less net interim earnings, to be computed in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977); (see, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962)).

As for those employees who did not indicate a desire to transfer, but may have been deterred from doing so by Respondent's illegal conduct, it will be recommended that Respondent place such employees on a preferential hiring list to be given an opportunity by Respondent for employment prior to the employment of any other persons. Since the record does not identify those employees, I will regard this as a matter to be determined at the compliance stage of this proceeding.

As Respondent no longer operates the Murrysville-Pitcairn facility, I shall recommend that Respondent be required to post the attached "Notice To Employees" at all of its terminals for the usual period. In addition, since the posting of such notices alone will not be sufficient to reach all of the former employees at Murrysville-Pitcairn, I shall recommend that Respondent be required to mail a copy of the attached notice to each employee who was on Respondent's payroll there as of April 1979, at his or her last known address, as disclosed by Respondent's records or as may be amplified by the Union. Further, I shall recommend that the Board reserve to itself the right to amend or modify its Order to provide for events which have not been anticipated.

Respondent's unfair labor practices indicate a general attitude of opposition to the purposes of the Act; accordingly, a broad cease-and-desist order is necessary and appropriate to effectuate the policies of the Act.

Upon the foregoing findings of fact and the entire record in this case, I make the following:

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Teamsters Local 249 is a labor organization within the meaning of Section 2(5) of the Act.
3. By failing and refusing to transfer employees in the bargaining unit from Murrysville-Pitcairn to New Stanton in April 1979 in the manner set forth above, Respondent discriminated against said employees in violation of Section 8(a)(3) and (1) of the Act.
4. By the foregoing conduct, and by threatening employees that Respondent would not transfer employees from Murrysville-Pitcairn to New Stanton because of their protected concerted union activities, Respondent interfered with, restrained, and coerced employees in the exercise of the rights guaranteed them in Section 7 of the Act in violation of Section 8(a)(1) of the Act.
5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[4]

The Respondent, M & G Convoy, Inc., New Stanton, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to employ as regular full-time drivers at its New Stanton, Pennsylvania, location all former employees at Murrysville-Pitcairn, including Carl Adams, Robert Amantea, Harry Barbus, Charles Burgh, Walter C. Dollman, David Eld, Frank Komlenic, Robert Kaczynski, George Lawrence, Cliff Lockwood, Jr., Toni Nancy, William Nock, Al Toth, William Walters, Dave Williams, and Scotty Norris.

(b) Threatening employees that Respondent will not transfer them to New Stanton because of their protected concerted union activities.

(c) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Offer immediate employment at New Stanton to those Murrysville-Pitcairn employees who desired to transfer to New Stanton, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of pay in the manner set forth in The

[4] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its finding, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

Remedy section of this Decision. Former Murrysville-Pitcairn employees not specifically named in the complaint who may have been deterred from making an application as described above shall be placed on a preferential hiring list by Respondent in the manner outlined in The Remedy.

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts of backpay due and the rights of employment under the terms of this Order.

(c) Post at all its terminals copies of the attached notice marked "Appendix"[5] and forthwith mail to the last known address of each former Murrysville-Pitcairn employee on its payroll on and subsequent to April 1979, a copy of such notice. Copies of said notice, on forms provided by the Regional Director for Region 6, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customaily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 6, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[5] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."